

BRIEF OF ELTRA CORPORATION, APPELLANT

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 77-1188

ELTRA CORPORATION,
Appellant

v.

BARBARA A. RINGER,
Appellee

Appeal from the United States District Court for the
Eastern District of Virginia, Alexandria Division

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BRIEF OF APPELLANT

I.

STATEMENT OF THE ISSUES

1. Can copyright registration of a typeface design, which was found by the District Court to be a "work of art", be denied solely on the authority of an administrative policy which is contrary to the express language of the copyright statute providing for registration of works of art?

2. Has there ever been a Copyright Office policy consistently applied to deny copyright registration to typeface designs and has Congress ever acquiesced in any such policy?

3. Can the Copyright Office's administrative interpretation of the copyright statute be entitled to any weight when the statutory interpretation is in excess of the Register's "essentially ministerial" powers?

4. Did the District Court improperly adopt the Copyright Office's interpretation of the copyright statute to exclude registration of appellant's typeface design?

Appellant submits that the District Court erred as a matter of law in denying registration of its typeface design once it was found to be a "work of art"; that there is no "long standing" practice of the Copyright Office refusing registration of typeface designs which would support denial of its claim; that Congress has never acquiesced in the denial of copyright registration of typeface designs; that

the Register's interpretation of the copyright statute to deny registration of typeface designs exceeds the "ministerial" functions of the office; and that the District Court erroneously substituted the Register's determination for its own.

II.

STATEMENT OF THE CASE

This appeal is taken by Eltra Corporation ("Eltra") from the October 26, 1976 order of the United States District Court for the Eastern District of Virginia, Alexandria Division (Bryan, J.), granting the motion of the defendant Register of Copyrights ("Register") for summary judgment^{1/} and denying Eltra's claim to copyright registration in its typeface design.^{2/}

In 1971, Eltra commissioned one of the world's leading typeface designers, Hermann Zapf, to create a new typeface

^{1/} Most of the material and undisputed facts in this case are set forth in the District Court's opinion at paragraphs (1) to (18) inclusive.

^{2/} The term "typeface" means a set of letters, alphabets, numerals, figurative signs, punctuation marks, and the like, intended to provide the means for composing text by any graphic technique such as printing. Typefaces are distinguishable one from the other by the differences in the repeating design elements consistently applied throughout the typeface. These design elements may be limitless, and include such aspects as the degree of stroke contrast, angle of emphasis, stroke shape, serif or non-serif (sanserif), curved form and arch form. Court's Opinion, finding No. 1, A.50.

design. Eltra paid Zapf \$11,000 for his work. Parker Aff., A.33.^{3/} During the period from January 1972 through January 1974, Hermann Zapf expended nine months of full-time effort drawing a new typeface, which he initially called PEGASUS, but which was later renamed ORION. Zapf Aff., A.33; Court's Opinion, finding No. 4, A.51.

The ORION typeface design incorporates new and existing design elements in a new arrangement, thus creating an original typeface design that is substantially different from prior typeface designs. Zapf Aff., A.38-39; Court's Opinion, finding No. 7, A.52.

On April 1, 1974, Eltra first published the ORION typeface design on filmstrips for its photocomposition equipment. Parker Aff., A.33. These copies bore the appropriate copyright notice. Glasgow Dep., A.71-72; Court's Opinion, finding No. 8, A.52. On July 2, 1974, Eltra filed an application in the United States Copyright Office on Form "G" to register its claim of copyright in its ORION typeface design. Court's Opinion, finding No. 9, A.52.

Eltra's claim of copyright met all procedural requirements of the copyright statute applicable to registration.

^{3/} Where applicable, page references to the Record will be prefaced by "R.", and to the Appendix by "A.". Stipulated Documents will be referred to as "SD", followed by the appropriate exhibit number, with page references to the Appendix.

The typeface design had been published with a proper notice of copyright. 17 U.S.C. §10, Court's Opinion, finding No. 8, A.52. The copyright application had been properly filled out and accompanied at the time of filing with the requisite copies and fee. 17 U.S.C. §13; Court's Opinion, finding No. 9, A.52.

Plaintiff's copyright application was rejected on December 19, 1975 by Richard E. Glasgow, then Chief of the Examining Division of the Copyright Office,^{4/} in a letter stating:

"We regret that with respect to this typeface design, we can find no elements, either alone or in combination, which can be separately identified as a 'work of art'." SD-2, A.96.

The only stated basis for rejection by the Copyright Office was its determination that Eltra's design did not qualify as a "work of art." The letter of December 19, 1975 also advised Eltra that the rejection represented the final action of the Copyright Office and exhausted Eltra's administrative remedies. A.96.

^{4/} Glasgow was authorized to represent the Register and had full responsibility for final decision to accept or reject applications for copyright registration. Ringer Stip., A. 17-18.

On April 7, 1976, Eltra brought this action in the nature of mandamus to compel the Register to register its ORION typeface design. A.1. The United States District Court for the Eastern District of Virginia has jurisdiction under 28 U.S.C. §1338(a).

On September 14, 1976, Eltra filed a Motion for Summary Judgment under Rule 56(a) of the Federal Rules of Civil Procedure. A.26. On October 8, 1976, the Register filed a Motion to Dismiss and in the alternative a Cross-Motion for Summary Judgment. A.42.

The Defendant's Cross-Motion, supporting brief and documentary material introduced for the first time the contention that the Register has a "long standing" practice of refusing registration to typeface design and that Congress has acquiesced in such practice. In response, Eltra showed that prior to 1956, the Copyright Office did not have a regulation prohibiting registration of typeface design; that the Register's own documents evidenced four registered claims of copyright on typeface designs; and that nine copyright claims on typeface designs were recently registered to its competitor, Alphatype. SD-29, (A.156), 66-67, (A.208, 211), 69A (A.225) and 69B, (A.228).

On October 26, 1976, the District Court ruled that Eltra's typeface design is a work of art, but nevertheless granted the Register's Cross-Motion for Summary Judgment on

the basis of the Register's "long standing administrative practice" and Congressional acquiescence. A.50-61.

III.

ARGUMENT

1. The District Court Erred in Denying Registration to Eltra's Typeface Which It Held to be a Work of Art.

If Eltra's ORION typeface design qualifies as a "work of art", it is entitled to copyright registration under the explicit language and mandate of 17 U.S.C. §5(g). There is no qualifying language in this section or elsewhere in the codified version of the 1909 statute, as amended, or in any judicial decisions which would limit copyright registration to some "works of art" but would deny registration to others. Hence, once Eltra's typeface design was found to be a "work of art", it was registrable for copyright under the statute.

The District Court unequivocally found and held that Eltra's typeface design was a "work of art", stating in particular:

"Under the admitted and uncontested facts of this case the ORION typeface design is a work of art".
(emphasis included in original text) A. 57.

The court emphasized this holding in the following language:

"The Court accordingly concludes that the typeface design here in question is a work of art; and that the Register's interpretation of the act to the contrary over the years and as exemplified in its regulations 202.1(a) and 202.10(c) is erroneous." A.59.

The court's finding that Eltra's design was a "work of art" is determinative of its right to copyright registration.

Richard E. Glasgow, Chief of the Examining Division and the official who made the final rejection of Eltra's claim of copyright, conceded that if Eltra's typeface design were a "work of art", the Copyright Office would have registered it. Glasgow Dep., A. 78.^{5/}

The District Court's finding that Eltra's design is a "work of art" is supported by legislative history and judicial construction of the Copyright Act. "Art" is defined by Webster's Third International Dictionary, 1966 edition, as the "application of knowledge or skill in effecting a desired result." SD-43, A. 188. Even handwriting, as distinguished from the art forms of typeface design, was apparently copyrightable under the earlier copyright statute. In Bleistein v. Donaldson Lithographing Co., 188 U.S. 239, 249 (1903), Justice Holmes held:

"Others are free to copy the original. They are not free to copy the copy (citation omitted). The copy is the personal reaction of an individual upon nature. Personality always contains something unique. It expresses its singularity even in handwriting, and a very modest grade of art has in it something irreducible which is one man's alone. That something he may copy-right unless there is a restriction in the words of the act." (emphasis added)

^{5/} The established practice of the Copyright Office of registering claims of "works of art", was recognized by this Court in Stein v. Mazer, 204 F.2d 472 (4th Cir., 1953) as follows:

(continued)

Under the Copyright Act of 1870, only works of "fine art" were copyrightable. But the limiting phrase "fine arts" was dropped in the Copyright Act of 1909 and the broader phrase "works of art" was substituted. Herbert Putnam, Esq., then Librarian of Congress and perhaps the most active leader in the pre-1909 copyright revision movement, declared before the Joint Meeting of the House and Senate Committees in 1906:

"The term 'works of art' is deliberately intended as a broader specification than 'works of fine arts' in the present statute with the idea that there is subject matter (for instance, of applied design, not yet within the province of design patents), which may properly be entitled to protection under the copyright law." Arguments before the Committee on Patents of the Senate and House of Representatives, 59th Cong., 1st Sess. 11 (June 6-9, 1906), E. Brylawski and A. Goldman, "Legislative History of the 1909 Copyright Act" (1976), at H-11.

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"Since 1909, it seems to have been the practice of the Copyright Office to grant copyrights to works of art, and to deny copyrights to purely utilitarian objects.

On the other hand, it has been the practice of the Copyright Office since 1909 to refuse copyright registration only to those works of a wholly utilitarian nature, which would not be called works of art although they might possess pleasing design."

Id. at 477.

Putnam's quotation was cited with approval by the Supreme Court in Mazer v. Stein, 347 U.S. 201 (1954), to show that "works of art" under the 1909 Act described a new and much broader copyrightable class. In addition, the court said:

"Individual perception of the beautiful is too varied a power to permit a narrow or rigid concept of art." Id. at 214.

The Supreme Court held in Mazer that plaintiff's statuettes were works of art and entitled to copyright registration and that their incorporation in lamp stands did not remove them from the ambit of copyright registration. The utilitarian application of a statuette, or by analogy, of a typeface design,^{6/} does not destroy its character as a work of art or its entitlement to copyright registration. The creativity and originality of Eltra's ORION typeface design is admitted in this case. Zapf Aff., A.38; Court's Opinion, finding Nos. 4-7, 14, A.51-54. Such creativity and originality clearly met the test of a "work of art."

Having found that Eltra's design is a "work of art" under 17 U.S.C. §5(g), the District Court should have ordered registration of the typeface design notwithstanding any

^{6/} Professor Melville Nimmer, probably the most outstanding copyright authority, asserts that original typeface designs are copyrightable as "works of art." SD-24, A.146. See also, Nimmer on Copyright, §33, pps. 138-139.

administrative regulation or practice to the contrary. In Esquire, Inc. v. Ringer, 414 F.Supp. 939 (D.D.C. 1976), the District Court granted summary judgment for Plaintiff in a mandamus action to compel copyright registration of a lamp housing design. The Court held that the design which was to be used in outside lighting of parking lots was a work of art and entitled to registration under Mazer v. Stein, supra, even though registration was contrary to what the Copyright Office claimed was its well-established practice of denying copyright to the shape of utilitarian objects. The Register, the Court held, cannot avoid the Supreme Court's interpretation of the Copyright Law.

Without further argument, the District Court's decision should be reversed, and the Register should be ordered to register the ORION typeface design as a work of art.

2. There Is No "Long Standing" Copyright Office Interpretation of the Statute to Deny Registration of Typeface Design and/or Acquiescence of Congress in Such Interpretation.

Having determined that the ORION typeface design is a work of art, the District Court should have granted Eltra's motion for summary judgment and ordered registration of the copyright claim. The District Court ruled, however, that there existed a long standing practice of the Copyright Office of denying registration of typeface design and that such practice and the acquiescence of Congress in the practice precluded registration of the typeface design even though it is a work of art. As previously shown, this

holding is in error as a matter of law since bureaucratic practice cannot supplant Eltra's entitlement to registration under the express terms of the Copyright Act, 17 U.S.C. §5(g). Furthermore, the lower court's holding is in error as a matter of fact since the record proves no such long standing practice or Congressional acquiescence.

The Register argued below that the Copyright Office has had a clear, well-known and consistent practice of denying registration for typeface designs "since the inception of the current Copyright Act" in 1909. D's Br., 11 and 12; R.133, 134. The Register conceded, however, and the District Court correctly found no regulation or published practice of the Copyright Office which denied registration to any typeface designs from 1914 to 1956. A.125-126. The Copyright Office regulation previously in effect from 1910 to 1914 had limited applications for typeface design only to the extent of barring registration in Class "K".^{7/} The 1956 regulation, Section 202.1(a) upon which the Register relies, denied registration only to de minimis or "mere variations of typographic ornamentation (and) lettering". SD-3, A.99. That neither the 1910 nor 1956 regulation barred registration

^{7/} In 1910, the Copyright Office had a regulation prohibiting registration in Class "K" (Prints and Pictorial Illustrations) for "ornamental letters or forms of type". SD-8, A.126. No other part of the 1910 regulations explicitly prohibited copyright registration of typeface designs in any other class. In 1914, the copyright regulations were amended to eliminate even this limited restriction on the registrability of ornamental letters or forms of type. SD-9, A.128.

of original and creatively new typeface designs, such as Eltra's ORION design, is evident from the fact that the Copyright Office has not adduced a single case where it has denied registration to a typeface design under either the 1910 or 1956 regulation.

The only evidence which the Register offers of any rejection of typeface designs appears in unpublished correspondence from the Copyright Office files in connection with four rejected applications filed during the period between 1930 and 1941, but not introduced by the Register until the 11th hour of the summary judgment proceedings below. SD-65, A.195; 68, A.214; 69, A.220 and 70, A.231. In one case (SD-70, A.231) the unpublished materials show rejection was based upon the assumption by the Copyright Office that the typeface design was not a "work of art", a basis which was specifically rejected by the District Court in this case. Court's Opinion, A.59. No reasons are given for the other three rejections except that they were nonregistrable merely because they were typeface designs. SD-65, A.195; 68, A.214; 69, A.220. Possibly these rejections were based upon the Copyright Office assumption that protection for typeface design had been pre-empted by the patent laws (SD-73, A.269), a misconception which was explicitly rejected in Mazer v. Stein, supra, and In re Yardley, 493 F.2d 1389 (CCPA 1974).

The same unpublished correspondence files of the Copyright Office upon which the Register relies to demonstrate a long standing practice of denying copyright for typeface designs show that four registrations for typeface designs were, in fact, made during the period from 1929 to 1931, SD-66, A.208; 67, A.211; 69A, A.225 and 69B, A.228. In this connection, attached hereto and marked Exhibits A1-A4 are the four copyright registrations referred to in such correspondence. The 1929 registrations identified respectively as Exhibit A1 (Reg. No. AA:23099, SD-66, A.208) and Exhibit A2 (Reg. No. AA:24329, SD-67, A.211) were referred to in E. W. Bradford's letter of March 8, 1930 (SD-65, A.203). The 1931 registrations, identified as Exhibit A3 (Reg. No. AA:64024) and Exhibit A4 (Reg. No. AA:66164), are the copyright certificates issued on the basis of the applications identified in the Register's documents SD-69A, A.225 and 69B, A.228. Collectively these four registrations had the following titles:

BERNHARD GOTHIC LIGHT

BERNHARD GOTHIC MEDIUM

BERNHARD GOTHIC EXTRA HEAVY

BERNHARD GOTHIC LIGHT ITALIC

Two of the total of four rejections introduced by Defendant concern rejections of 1930 applications submitted by the same claimant, namely Lucien Bernhard, on works entitled:

BERNHARD HEAVY GOTHIC

BERNHARD MEDIUM GOTHIC

Why registration was denied in 1930 to Bernhard's "Heavy Gothic" and "Medium Gothic" while registration was allowed as to his "Gothic Light", "Gothic Medium", "Gothic Extra Heavy" and "Gothic Light Italic" in 1929 and 1931 seems both arbitrary and inconsistent. Yet, the Copyright Office relied on the two rejected applications as proof of a practice of rejecting typeface designs without any evidence to distinguish the four registered from the two rejected applications. Certainly the action of the Copyright Office in registering four out of six of these works speaks louder than the words of the Register asserting a long standing policy of rejecting copyright claims for typeface design. In the face of this evidence from the Register's own exhibits, there can be no doubt of the lack of a consistent and clear practice of the Register to reject copyright registration of typeface designs, even during the 1929 to 1941 period. If there were any doubt, it should have been resolved in Eltra's favor. Spalding v. Antonious, ___ F.2d ___, 191 U.S.P.Q. 593, 594 (4th Cir. 1976); Heyman v. Commerce and Industry Ins. Co., 524 F.2d 117 at 1320 (2d Cir. 1975).

To further demonstrate the fallacy of the Register's claim to a long standing practice of denying registration for original typeface designs, attached hereto and identified as Exhibits B1-B5 are five copyright certificates

claiming copyright protection on typeface designs and related materials. These copyright certificates cover the more recent period from 1939 to 1968 and are entitled to prima facie evidentiary effect of all the facts recited and of the validity of such claims of copyright. 17 U.S.C. 209; Freudenthal v. Hebrew Publishing Co., 44 F.Supp. 745, 754, 755 (S.D.N.Y. 1942); Home Art, Inc. v. Glenseer Textile Corp., 81 F.Supp. 551, 552 (S.D.N.Y. 1948); Remick Music Corp. v. Interstate Hotel Co. of Nebraska, 58 F.Supp. 523 (D.Neb. 1944), aff'd, 157 F.2d 744 (8th Cir. 1946), cert. denied, 329 U.S. 809 (1947); Telex Corp. v. International Business Machine Corp., 367 F.Supp. 258 (N.D. Okla. 1973); Pantone, Inc. v. A. I. Friedman, Inc., 294 F.Supp. 545 (S.D.N.Y. 1968); Magnus Organ Corp. v. Magnus, 269 F.Supp. 981 (D.N.J. 1967). The last two of these registrations, namely B4 and B5, are particularly illuminating, since the copyright application and certificate forms were changed in more recent years to provide a line for the description of new copyrightable matter and to provide an opportunity for an explicit claim of copyright. In each case, the applicant took advantage of this new opportunity to claim copyright on the typeface designs. For instance, in the 1947 registration (B4-Reg. No. AA:13890), there is an explicit claim of copyright on the "typography" of the noted typeface designer Honore Guilbeau; and in the 1968 registration (B5-Reg. No. AA:21074), on the "letter

and numeral forms designed by the author", Rudolph Ruzicka, a well-known typeface designer.

Eltra also submitted below nine registrations of typeface designs to its competitor, Alphatype Corporation. SD-29-30, A.156-183. The District Court apparently denied the prima facie evidentiary effect of the copyright certificates, which showed no limitation on the claim of copyright, on the basis of certain correspondence between Alphatype's attorney and the Copyright Office. SD-31, A.184. Nothing in the file, however, indicates that Alphatype considered its typeface designs were not covered by such registrations,^{8/} and even were there ambiguities or uncertainties in the correspondence, they should be resolved against the Register because any such ambiguities would be in conflict with the copyright certificates themselves. SD-29, A.156-173.

In conclusion, there is simply no published regulation or established Copyright Office practice precluding copyright registration of typeface designs, either as early as 1909,

^{8/} The District Court held that "the copyright (on the Alphatype designs) was for the method of conveying technical information, and the actual letter forms were immaterial." A.59-60. However, the Court made this assumption in obvious reliance upon the Copyright Office's characterization of Alphatype registrations that "the basis for the registrations is the technical information conveyed by these symbols and not the drawings of the letter forms themselves" (D's Br. at 12; R.133).

(continued)

as the Register claims,^{9/} or in more recent years. The record shows the Copyright Office's rejection of four applications for typeface designs filed between 1931 and 1941, during which time it also registered claims in four typeface designs. Furthermore, from 1937 to 1968, the Copyright Office registered at least five other works covering typeface designs, two of which involved explicit claims of

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In support of its statement the Copyright Office relied upon an August 15, 1975 letter from Alphatype's attorney (SD-89, A.286) and a November 5, 1975 letter from the Copyright Office (SD-90, A.288). Actually, the August 15, 1975 letter related only to "Claro Condensed Italic", one of Alphatype's nine applications, and even this letter was supplemental to a much longer memorandum of July 31, 1975 (SD-31, A.184) which stated clearly that "claimant wishes to withhold any disclaimer of the 'font design per se' until a final decision by the Register, the courts and/or Congress on the copyrightability of typeface design, typography and/or fonts". No subsequent communication, including the November 5, 1965 (SD-90, A.288) letter from the Copyright Office, required a limitation on Alphatype's claims of copyright or any disclaimer on its font or typeface designs and the nine copyright certificates which subsequently issued (SD-29, A.156) carried no such limitation of claim of copyright nor any disclaimer.

9/ Most of the documentary material submitted by the Register to show the so-called "long standing" practice in refusing registration to typeface designs does not support this conclusion. For instance, the Register's documents SD-66, 67, and 71 (A.208, 211, 254) are copyright application forms for which no rejection letters or any indications of adverse dispositions were tendered by the Register. Documents SD-72, 74, 75 and 76 (A.259, 272, 275, 278) are certified copies of various Copyright Office circulars making no reference to the non-registrability of typeface designs.

copyright on typeface designs or typography. Finally, the Register submitted no case of rejection of a typeface design during recent years, thereby suggesting that the Copyright Office has abandoned any practice of denying registration to typeface designs, if, indeed, such a practice ever existed.

It is axiomatic that if there were no "long standing" practice of the Copyright Office in denying registration of typeface designs, there was nothing in which Congress could "acquiesce".^{10/} Nevertheless, the Register included in its 11th hour submission in the proceedings below copies of thirteen design protection bills and made reference to fifty-six other design bills ostensibly to show that Congress' failure to enact certain design protection legislation meant that Congress had acquiesced in the Copyright Office's interpretation of the 1909 statute not to protect typeface designs. Attached as Exhibit C is a chart which presents in graphic form all of the design bills claimed by the Register to show Congressional acquiescence in the Copyright Office's "practice" of denying registration of typeface design.

^{10/} Even if there were evidence of Congressional acquiescence, any such acquiescence should be given little if any weight. U.S. v. Southwestern Cable Co., 392 U.S. 157 (1968); Rainwater v. U.S., 356 U.S. 590, 593; U.S. v. Price, 361 U.S. 304, 313, and Haynes v. U.S., 390 U.S. 85, 87, note 4.

Of the sixty-nine bills charted in Exhibit C, only eleven bills mention typeface design. Nine of these were to amend the design patent laws, and had nothing to do with the Copyright Statute of 1909 or Copyright Office administration. The remaining two bills are the Senate and House versions of the same bill,^{11/} but the limited hearings on this bill did not discuss the registrability of typeface designs. Hence, there is no evidence that Congress was even aware of the Copyright Office's interpretation or alleged practice in refusing registration of typeface design.

None of the bills relied on by the Register are relevant to this proceeding, since they all sought to secure protection for industrial designs or designs given a utilitarian application. Any utilitarian aspect of Eltra's design and the bills seeking protection for utilitarian designs are irrelevant since the District Court correctly found:

"Typeface should no more be denied registration on the theory that the letters themselves have an underlying function separate from its artistic design than could registration be denied the statuettes in Mazer because the statuettes were intended for an underlying utilitarian use as bases for table lamps". Court's Opinion, A.56-57.

The Register emphasized also in the proceeding below the isolated statements by one witness, Robert Nelson, in hearings before the House Committee on Patents in 1914 and

^{11/} S.2601 (SD-58) and HR 7539 (SD-59), 68th Cong. 1st Sess., 1924, shown on attached Exhibit C-2.

1916 in support of more lenient design patent procedures in the Patent Office. Mr. Nelson did state, as the Register asserts, that he was unable to secure either patent or copyright protection for his typefaces, but his testimony fails to refer to any Copyright Office practice of refusing registration of typeface or to his being refused such registration. This testimony was given long before 1956 and therefore at a time when there was no regulation of the Copyright Office limiting registration of typeface design.

The plethora of bills relied on by the Register prove no more than that certain Congressional committees or subcommittees failed to act on a wide variety of design protection bills, but such inaction has no ostensible connection to typeface designs. Even if there had been some inaction on typeface design legislation, such inaction is not equivalent to acquiescence.^{12/} As stated by this Court in Duncan v. Railroad Retirement Board, 375 F.2d 915, 919 (4th Cir. 1967):

"However, the courts are properly chary of equating mere inaction with approval in the absence of a solid foundation for the inference of conscious ratification."

^{12/} Since the District Court found not only inaction but acquiescence of Congress in the Copyright Office practice, acquiescence thereby must mean something more than inaction, namely, inaction coupled at least with knowledge of the practice.

Eltra submits that the issue of the registrability of typeface designs did not in fact publicly surface until after the submission of its claim of copyright in 1974. The Copyright Office held a hearing on this issue on November 6, 1974 (SD-23, A.143) and eventually transmitted comment to the House subcommittee which was studying the Copyright Revision Bill. SD-22, A.139. In 1976, the House subcommittee proposed certain amendatory language to Title I of the bill and at the same time cautioned that the amended Title I, as distinguished from Title II, of the bill was not intended to protect typeface designs. SD-85 at 50, 55, A.284, 285. Such legislative history of the Copyright Revision Bill has no bearing on the registrability of Eltra's typeface design since the Copyright Revision Bill has no retroactive application to the copyrightability of Eltra's published design under the 1909 Act, as amended. Similarly, the House subcommittee's report on the intent of the new law

cannot constitute an interpretation of the 1909 statute^{13/}
nor approval of the Copyright Office practice of refusing
registration under the 1909 Act, as amended. Furthermore,
such cautionary language of the subcommittee is meaningless
if the new law is broad enough to encompass copyright of
original typeface designs.^{14/}

In summary, there is no evidence either of any long
standing practice by the Copyright Office of consistently
denying registration to typeface designs or of any Congres-
sional knowledge much less "acquiescence" in such practice.^{15/}
The District Court was clearly erroneous in so holding and
entering summary judgment for the Register.

3. The Register's Interpretation of the Copyright
Statute is Entitled to No Weight Since It Exceeds Her
"Essentially Ministerial" Powers Under the Statute.

- A. The Register of Copyrights has only ministerial
authority under the 1909 statute.

13/ Even if the entire 1976 Congress had expressed an opinion
on the registrability of typeface design under the 1909
statute, it would be irrelevant. For instance, the opinion
of Congress in 1971 as to the meaning of 17 U.S.C. §101(e)
[equivalent to §25(e) of the Act of 1909] was rejected in
Heilman v. Levi (E.D. Wisc. 1975), 30 F.Supp. 1106 at 1111-
13, 185 U.S.P.Q. 682 at 686-7. See also, McKinney's Stats.
§75, pps. 159-160.

14/ To assert the contrary would be to interpret a law by
first reading the legislative history; and if it is ambi-
guous, only then reading the law.

15/ The fallacy of Defendant's argument of Congressional
"acquiescence" is exposed by the fact that the Copyright
Office ignored any such "acquiescence" in changing its
regulations to permit registration of copyright in textile
fabric and jewelry designs (SD-6, A.113-114), notwithstanding

(continued)

The Copyright Office is unique and, unlike its Constitutional sibling, the Patent and Trademark Office, is not an agency in the executive branch of government, equipped by statute with a team of examiners and a statutory examining procedure.^{16/} Rather, the Copyright Office is part of the Library of Congress, which in turn is part of the legislative branch of the federal government, and the

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Congressional failure to sanction such registration, even after hearings. HR 11321, 63rd Cong. 2d Sess. (1914); HR 6458 and S.6925, 64th Cong. 1st Sess. (1916); S.5075, 72nd Cong. 2d Sess. (1932); HR 5859, 74th Cong. 1st Sess. (1935); HR2860, 80th Cong. 1st Sess. (1947).

^{16/} Unlike the copyright statute, examiners are expressly provided for under the trademark and patent laws. 15 U.S.C. §1062 (1970); 35 U.S.C. §§3, 7, 135 (1975). Also the trademark and patent laws deal explicitly with the rejection of trademark and patent claims and with the bases for refusing registration of such claims. 15 U.S.C. §1052 (1970); 35 U.S.C. §102 (1975). In the pre-1909 legislative proceedings on the Copyright Act, Herbert Putnam, the Librarian of Congress who then administered copyright registration directly, acknowledged these distinctions between the Patent Office and the Copyright Office when he stated: "But you see in the Patent Office they have adjudication but we do not. That is the difference." Brylawski and Goldman, *supra*, at D-81. Also, in accord, *Id.* at E-26. In the February 5, 1907 Committee Report (S.Rep. 6187) on a bill substantially in the same form as the Act of 1909, the Committee stated:

"What the claimant of copyright does in the Copyright Office is merely to file a claim; and what the Office does for him is to merely record this claim. It does not adjudicate it." *Id.*, at Q-5.

Copyright Office performs a library-like function of receiving and recording copyright deposits.^{17/}

The 1909 copyright statute provides no authority to determine the copyrightability of subject matter^{18/} that

^{17/} The Defendant-Appellee, Barbara A. Ringer, is the Register of Copyrights and head of a department of the Library of Congress, which is part of the legislative branch of the federal government. Complaint Paragraphs 3, 8 and Answer thereto. A.2, 12, 13. Defendant was appointed as Register of Copyrights by the Librarian of Congress, who is appointed by the President. Complaint Para. 29 and Answer thereto. A.6, 16. She is a legislative officer and has not considered herself subject to the Administrative Procedure Act or the Freedom of Information Act (SD-23, A.144, 145) which are otherwise applicable to the executive branch of the federal government.

^{18/} During the hearings on the 1909 Act, the functions of the Copyright Office under the Act were described as follows:

"We feel it to be highly undesirable that a system of jurisprudence should be erected around the office of the Register of Copyrights. It seems to us that the office should remain as it is now, a mere registration office, leaving all the questions which are likely to arise as to what is proper subject matter of copyright outside of the jurisdiction of the Register, and within the jurisdiction of the Courts." Brylawski and Goldman, supra, at E-43.

otherwise fits the statutory language.^{19/} As stated in the Esquire case, the statute gave the Register only a limited "ministerial" function, but no authority to deny registration to "works of art". Esquire Inc. v. Ringer, supra, at 940. The authority to establish "rules and regulations" under 17 U.S.C. §207 was designed merely to enable the Register to perform certain housekeeping functions,^{20/} for instance, to assess fees for onerous or

19/ As stated in Bleistein v. Donaldson Lithographing Co., 188 U.S. 239, 249 (1903), "...a very modest grade of art has in it something irreducible, which is one man's alone. That something he may copyright unless there is a restriction in the words of the act." (emphasis added) The 1909 statute imposes no such "restriction" on the copyrightability of typeface designs or for that matter on any "work of art", a category which fits the statutory language.

20/ In the pre-1909 deliberations, one witness described the Register's rule-making authority as applying to the "indexing" of registration. Brylawski and Goldman, supra, at D-121. Another witness described it as applying to the "mere administration" of the Copyright Office. SD-17 at 60. The then Register of Copyrights described the registration procedure as a "clerical" service. Brylawski and Goldman, supra, at D-66.

unreasonable examinations of copyright deposits^{21/} and to
adopt copyright application forms or to ask an applicant
how old he was.^{22/}

As a clear admonition against the Copyright Office's
exercising any broad interpretative function of what subject
matter was registrable, the Congressional committee reports
expressly provided that the Register of Copyright's author-
ity to make "rules and regulations (did) not confer upon
the Register any judicial functions." H.Rep. No. 2222,
60th Cong., 2d Sess. (1909), (S.Rep., 60th Cong. 2d Sess.
1909 adopted the language of the House Committee Report).
Brylawski and Goldman, supra, at S-20. Representative
Currier, the Congressional father of the Act of 1909,
shortly thereafter emphasized in an exchange with the then
Register of Copyrights that the Copyright Office did not
have and was not intended to have a body of examiners as did
the Patent Office and, furthermore, that the Register had
no right to determine what was copyrightable. SD-18, A.136-
138.

^{21/} Id. at D-121, E-55.

^{22/} Id. at D-118.

The only copyright treatise published contemporaneously with the passage of the 1909 statute was the work "American Copyright Law" (1917), in which Arthur Weil wrote:

"There is nothing in the present Act, any more than there was in its predecessors, providing for any machinery similar to that existing in the Patent Office, for any preliminary, official examination of works, seeking copyright. There are cogent practical reasons for such an omission from the copyright system. The authority given to the officers charged with the administrative aspects of the Copyright Act is of the most meagre descriptions. They are, in brief, to act as registrars and depositories of works in which copyright is claimed."

Id. at p. 207-208.

There is, therefore, no statutory basis for the Register's exercise of discretion to determine the copyrightability of a work or to appoint a body of examiners for that purpose. The office serves only as a pipeline of materials to enrich the collections of the Library of Congress.

"The powers of the Register of Copyrights are analogous to the powers of the Postmaster General in admitting articles in the mail and of the Register of Deeds in recording instruments".^{23/} United States ex rel. Twentieth Century-Fox Film Corp. v. Bouve, 33 F.Supp. 462, 463 (D.D.C. 1940), aff'd, 122 F.2d 51 (D.C.Cir. 1941).

^{23/} Any contrary authority in Bailie v. Fisher, 258 F.2d 425 (D.C.Cir. 1958) and Hoffenberg v. Kaminstein, 396 F.2d 684 (D.C.Cir.), cert. denied, 393 U.S. 913 (1968), which were relied upon below by the Register, is weakened by the court's failure to comment upon the 1909 Congressional committee reports and to examine the legislative history

(continued)

In King Features v. Bouve, 48 U.S.P.Q. 237, 242 (D.D.C. 1940), the court said:

"Whether an applicant or claimant has complied with the laws so that his claim is entitled to be registered raises questions of fact and law to be decided by the court; the Register of Copyrights has no power to decide such questions, especially where the deposit of copies and the application filed, when read together as they should be, are in apparent compliance with the Act (emphasis added)."

The Register's rejection of Eltra's claim of copyright is based upon a statutory interpretation contrary to the express language of Section 5(g), 17 U.S.C., and clearly involves the exercise of a highly discretionary, judicial or executive, as opposed to a ministerial, function. This is an arbitrary exercise of power beyond the scope of the Register's authority.

B. Construing the 1909 statute to authorize the Register to deny substantive rights of copyright is unconstitutional and a violation of the separation of powers doctrine.

Since the District Court ruled that the function of the Register is "essentially ministerial", it did not deal with the serious constitutional issue raised in Eltra's

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of the 1909 statute. In those cases, the court apparently assumed that the Register had the same administrative authority as normally vested in the head of an executive agency, completely ignoring the fact that the Register of Copyrights is a legislative officer without executive authority and operates under a statutory mandate not to exercise "any judicial functions", Brylawski and Goldman, supra, at S-20.

brief (P's Br. 57-63; R.95-101.)^{24/} However, when the District Court failed to strike down the Copyright Office's adjudicative interpretation of the statute that typeface designs were not registrable, it assumed that the 1909 statute gave the Register the authority to make such a statutory interpretation. The exercise of such authority by a legislative officer such as the Register of Copyrights, coupled with a denial of substantive rights of copyright claimed by Eltra, directly raises the question whether the 1909 copyright statute, as so construed, is unconstitutional and in violation of the separation of powers doctrine. (See generally, Brylawski, The Copyright Office: A Constitutional Confrontation, 44 Geo. Wash. L. Rev. 1 (1975)).

The Register's rejection of Eltra's claim of copyright in its typeface design, unless reversed by this Court,

^{24/} That this constitutional issue was serious is demonstrated in at least three recent instances: (1) the Department of Justice refused to actively represent the Register of Copyrights in the proceedings below; (2) certain amendments were adopted in the then proposed Copyright Revision Bill because of Congressional concern over some of these constitutional problems [See House Report S.22, H. Rep. No. 1476, 94th Cong., 2d Sess. 174 (1976)(SD-85)] and (3) it was reported in Variety for October 27, 1976 at page 94: "President Ford's signature finally made it to the copyright bill last week but not without a high-level confrontation with the Justice Department which recommended a last-minute veto of the hard-fought measure. . . many of the new duties appear to be executive in nature, encroaching on the authority of the President himself, the J.D. (Justice Dept.) said in a confidential memo".

constitutes a final determination of Eltra's rights under the copyright statute. Without a copyright certificate, Eltra cannot maintain an action for infringement of its rights by another party.

"No action or proceedings shall be maintained for infringement of copyright in any work until the provisions of this Title with respect to the deposit of copies and registration of such work shall have been complied with." 17 U.S.C. §13.

Nor can Eltra collaterally attack the propriety of the Register's rejection in a copyright infringement proceeding. Vacheron & Constantin-Le Coultre Watches, Inc. v. Benrus Watch Co., Inc., 260 F.2d 637, 639-41 (2d Cir. 1958).

The rejection of a claim of copyright clearly involves the execution and application of the copyright laws to affect the substantive and property rights of copyright claimants such as Eltra. This kind of power has been declared not appropriate to a legislative subdepartment like the Copyright Office and the exercise of such a power by the Register of Copyrights violates the separation of powers doctrine. In Springer v. Phillipine Islands, 277 U.S. 189 (1928), the Supreme Court declared:

"Legislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them or appoint the agents charged with the duty of such enforcement. The latter are executive functions." 277 U.S. at 202.

In the recent case of Buckley v. Valeo, 424 U.S. 1 (1976), the Supreme Court held that the exercise by the

Federal Elections Commission of a rulemaking authority and the power to render advisory opinions were not "in aid of congressional authority to legislate" nor were they "sufficiently removed from the administration and enforcement of the public law" to allow them to be performed by the Congressionally appointed Commission without violating the separation of powers doctrine.

In the instant case, the Copyright Office has exercised a rulemaking authority in adopting Section 202.1(a) of its regulations. It has also rendered an adjudicatory determination that Eltra's claim of copyright is not registrable, under this regulation, which more directly affects Eltra's substantive rights than any "advisory opinion". Hence, if an "advisory opinion" was declared to be an executive function in the Valeo case, certainly the Copyright Office opinion that typeface designs are not registrable coupled with a decision to deny Eltra's rights based on such opinion would be no less an executive function.

These functions, as the court in Valeo said, "may therefore be exercised only by persons who are 'officers of the United States.'" Id. at 141. In construing the term "officers of the United States", the Court said:

"We think its fair import is that any appointee exercising significant authority pursuant to the laws of the United States is an officer of the United States, and must, therefore, be appointed in a manner prescribed by Section 2, Clause II of that Article (II)." Id. at 126.

However, the Register cannot qualify as a properly appointed "officer of the United States" within the meaning of the Constitution since she was appointed by the Librarian of Congress, 17 U.S.C. §202, and not by the President as prescribed by Section 2, Clause II of Article II of the Constitution.

The Register of Copyrights may not exercise the executive duties of even an "inferior officer" of the United States within the meaning of Section 2 of Article II. In Valeo, the court held that "inferior officers" under this section of the Constitution were those appointed by "heads of departments" within the Executive Branch of the government (Valeo at 132) and that "the term 'head of a department' means. . . the secretary in charge of a branch of the Government, like the State, Treasury and War, who is a member of the cabinet." Burnap v. United States, 242 U.S. 512, 515 (1920) citing U.S. v. Germaine, 99 U.S. 508, 510 (1879). Since the Register was appointed by the Librarian of Congress, who was not the "head of an (executive) department", the Register of Copyrights was not an "inferior Officer" empowered under the Constitution to perform an executive function.

The Constitutional appointment requirements are substantive and not merely semantic. If a legislative subdepartment like the Copyright Office can exercise broad administrative and executive powers in the interpretation of the copyright

statute and apply its interpretation to deny copyright protection to applicants such as Eltra, then there consistently would be no constitutional prohibition against Congress retaining within itself all of the powers and functions of the Patent and Trademark Office, the SEC, the ICC, the FTC and virtually any other independent or executive agency of the federal government, in which case the separation of powers doctrine would be reduced to a mere historical curiosity. The Valeo decision, however, prohibits any such exercise of administrative or executive powers by a legislative subdepartment like the Copyright Office under the separation of powers doctrine and the Appointments Clause of the Constitution.

In view of these considerations, the 1909 copyright statute should be given a constitutional rather than an unconstitutional interpretation^{25/} and the Register of Copyrights should be held to lack authority to reject the claim of copyright in typeface designs.

4. The District Court Erred in Substituting the Copyright Office's Interpretation of the Statute for Its Own Judgment.

The District Court found that the Copyright Office had made an "erroneous" determination that Eltra's typeface

25/ United States v. Delaware & Hudson Co., 213 U.S. 366, 407 (1909); Knights Templars' & Mason's Life Indem. Co. v. Jarman, 187 U.S. 197, 205 (1902).

since any applicable Copyright Office practice was secreted in unpublished correspondence in the Copyright Office files and did not appear in any published statement of Copyright Office policy or regulation. In any event, Eltra as an aggrieved party should have full access to the courts to nullify what the court below described as an "erroneous" practice of the Copyright Office, no matter how long standing. "(A)n Agency may not bootstrap itself into an area in which it has no jurisdiction by repeatedly violating its statutory mandate". Federal Maritime Commission v. Seatrain Lines, Inc., 411 U.S. 726, 745 (1973). Otherwise, the federal system would become a two-branch government excluding the very important policing by the courts of arbitrary and unlawful bureaucratic actions.

In relying on the Copyright Office's so-called "long standing" practice, the District Court cited this Court's opinion in Stein v. Mazer, supra, even though such language would not seem to be properly applicable to any "ministerial" action of the Copyright Office. The applicable principle in Stein, provides:

"When an agency of the United States is empowered by a federal statute to issue regulations under, and also to administer and apply, that statute, and when the agency over a course of years applies that statute in a certain way, that application should be given great weight when a court is called upon to determine the meaning of the statute." (emphasis added) 204 F.2d at 477.

Eltra submits that this principle should not control the outcome of this case for several reasons. First, Eltra has challenged the authority of the Register to adopt a regulation or practice which is in direct conflict with the explicit language of the Copyright Act affording protection to works of art. The principle of statutory construction in Stein v. Mazer, supra, is inapplicable unless the Copyright Office is empowered to adopt the administrative rule barring registrability of typeface designs. The Copyright Office, however, is not so empowered in view of its limited or "ministerial" authority, a matter that the Stein court did not consider.

Second, the principle set forth in the Stein decision requires that "the agency over a course of years applies the statute in a certain way". In Stein, Copyright Office regulation Section 202.8 had been in existence since shortly after the passage of the Copyright Act of 1909. In the instant case, there has been no such consistent regulation explicitly denying copyright registration to typeface designs. From 1914 to 1956, there was no regulation of typeface designs and, as Eltra has demonstrated, several typeface designs were registered. The 1956 regulation, Section 202.1(a), on which the Register relies, does not even purport to deny copyright registration to all typeface designs. SD-3, A.99.

Third, this Court's decision in Stein extended the scope of copyright protection and is consistent with copyright decisions since the first Copyright Act in 1790, which have continually expanded the scope of works subject to copyright protection, even in the face of ambiguous statutory language. The merit of expanding copyright protection was approved by the Supreme Court in Mazer v. Stein, supra, in the following language:

"The economic philosophy behind the clause impelling Congress to grant patents and copyrights is a conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors in 'science and useful arts'. Sacrificial days devoted to such creative activities deserve rewards commensurate with the services rendered." 347 U.S. at 219.

In this case, the Copyright Office is seeking to shrink, not expand, the scope of copyright protection to deny registration to typeface designs, which is contrary to the policy approved in Mazer v. Stein.

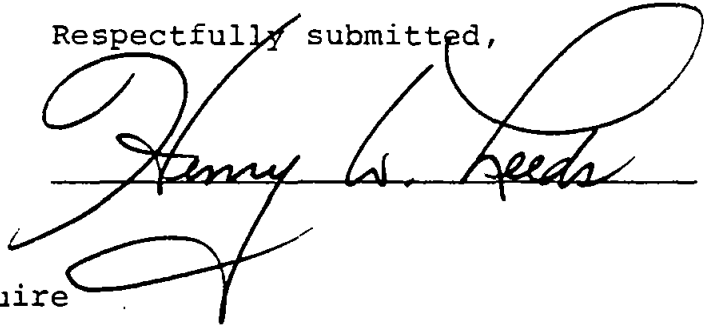
Finally, the Supreme Court's opinion affirming the decision of this Court in Stein v. Mazer illustrates that there did not exist in that case the conflict between the statute and its legislative history, on the one hand, and the practice of the Copyright Office, on the other hand. The Supreme Court emphasizes the compatibility of the administrative regulation with the congressional charter as follows:

IV.

CONCLUSION

For the foregoing reasons, Eltra respectfully requests that the decision of the District Court be reversed, that summary judgment be entered in favor of Eltra, and that the Register be ordered to register Eltra's ORION typeface design.

Respectfully submitted,

A large, stylized handwritten signature in dark ink, which appears to read "Henry W. Leeds". The signature is written over a horizontal line.

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CERTIFICATE OF COPYRIGHT REGISTRATION

This is to certify, in conformity with section 55 of the Act to Amend and Consolidate the Acts respecting Copyright, approved March 4, 1909, as amended by the Act approved March 2, 1913, that TWO copies of the BOOK named herein have been deposited in this Office under the provisions of the Act of 1909, together with the AFFIDAVIT prescribed in section 16 thereof; and that registration of a claim to copyright for the first term of twenty-eight years for said book has been duly made in the name of

American Type Founders Company,
300 Communipaw Ave.,
Jersey City, N. Y.

Title: An Advance Proof Sheet Bernhard Gothic Light.

Author: Lucian Bernhard, of Germany, domiciled in U. S.
at New York, N. Y.

Printed or produced by American Type Founders Co.

Date of publication in the United States Sept. 16 1929

Affidavit received Sept. 21 1929

Copies received Sept 21 1929

[SEAL]

REGISTER OF COPYRIGHTS

CCR 8
(Jan. 1973-1,000)

OPD

Exhibit A2 to Plaintiff's Brief

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Lucian Bernhard,
58 West 49th St.,
New York, N. Y.

Title: Bernhard Gothic Light Italic.

Author: Lucian Bernhard, of Germany,
domiciled in the U. S. at New York, N. Y.

Printed or produced by American Type Founders Co.,

Date of publication in the United States Dec. 26, 1930

Affidavit received Mar. 3, 1931

Copies received Mar. 3, 1931

[SEAL]

Barbara Reiger

REGISTER OF COPYRIGHTS

April 1974-1,000

CCR 8

Exhibit A3 to Plaintiff's Brief

43

44

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Lanston Monotype Machine Co.
24th & Locust Sts
Philadelphia Pa

Title: Janson. An Authentic Revival of a Classic Book Face
Adapted to the Monotype by Sol Hess.

Author: of U. S.

Printed or produced by Lanston Monotype Machine Co.

Date of publication in the United States Oct 22 1937
Affidavit received Apr 10 1939

Copies received Apr 10 1939

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CCR 8
(Jan. 1973-1,000)

GPO

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Mergenthaler Linotype Co.
29 Ryerson St.
Brooklyn, N. Y.

Title: Caledonia. A New Printing Type...
with a note on the Face by the
Designer and Notice on the Designer
by Hermann Puterschein.

Author: W. A. Dwiggins,
of U. S.

Printed or produced by Graphica Inc.

Date of publication in the United States Mar. 21, 1939

Affidavit received Mar. 23, 1939

Copies received Mar. 23, 1939

[SEAL]

Barbara Reiger

REGISTER OF COPYRIGHTS

April 1974-1,000

CCR 5

Exhibit B2 to Plaintiff's Brief

COPYRIGHT OFFICE OF THE UNITED STATES OF AMERICA

THE LIBRARY OF CONGRESS :: WASHINGTON

CERTIFICATE OF COPYRIGHT REGISTRATION

This is to certify, in conformity with section 55 of the Act to Amend and Consolidate the Acts respecting Copyright, approved March 4, 1909, as amended by the Act approved March 2, 1913, that TWO copies of the BOOK named herein have been deposited in this Office under the provisions of the Act of 1909, together with the AFFIDAVIT prescribed in section 16 thereof; and that registration of a claim to copyright for the first term of twenty-eight years for said book has been duly made in the name of

Mergenthaler Linotype Co.
29 Ryerson st.
Brooklyn, N. Y.

Title: Announcement of Fairfield. A Linotype Face.

Author: Rudolph Ruzicka, of U. S.

Printed or produced by Graphica Inc.

Date of publication in the United States Jan. 19, 1940

Affidavit received Jan. 24, 1940

Copies received Jan. 23, 1940

[SEAL]

Barbara Ruzick

REGISTER OF COPYRIGHTS

April 1974-1,000

CCR 8

Exhibit B3 to Plaintiff's Brief

**CERTIFICATE OF REGISTRATION
OF A CLAIM TO COPYRIGHT IN A BOOK PUBLISHED
IN THE UNITED STATES OF AMERICA**

REGISTRATION No.

A 13890

CLASS



THIS IS TO CERTIFY that the statements set forth on this page for the book herein named which was published in the United States on June 5, 1947 have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.

**NOT VALID WITHOUT
COPYRIGHT OFFICE
IMPRESSION SEAL**

Barbara Rogers
Register of Copyrights

1. COPYRIGHT OWNER OR OWNERS (Give full names and addresses)

The George Macy Companies, Inc.

595 Madison Avenue, New York 22, New York

2. TITLE OF BOOK The Adventures of Hajji Baba of Ispahan

(Retail price, \$.....)

3. AUTHORS (Editors, Translators, etc.) Full name (including full middle name), pseudonym (if any), and year of birth and, if dead, year of death, are requested for cataloging purposes.

(a) Name Honore Guilbeau Citizenship USA
(First) (Middle) (Last) (Country)

Domicile Peninsula, Ohio Birth _____ Death _____
(Address) (Year) (Year)

(b) Name William A Dwiggins Citizenship USA
(First) (Middle) (Last) (Country)

Domicile Hingham, Massachusetts Birth _____ Death _____
(Address) (Year) (Year)

(c) Name _____ Citizenship _____
(First) (Middle) (Last) (Country)

Domicile _____ Birth _____ Death _____
(Address) (Year) (Year)

4. (a) Check one of the following ONLY if your book is:

☒ A new edition of a previously published book.

☐ A translation.

☐ A serial republished in book form with new matter.

☐ United States edition of a book first published abroad on (Date) _____
in the English language and registered under Ad Interim No. _____
(Furnish if known)

(b) If checked above give title and author of original publication (if different from present book) and a brief statement of the nature of the new matter in this edition:

(a) Illustrations

(b) Typography

SEND CERTIFICATE, REFUND (IF ANY), AND OTHER COMMUNICATIONS TO:

Name The George Macy Companies Inc.

Address 595 Madison Avenue
(Number and Street)

New York, 22, New York
(City) (Zone) (State)

DATES OF RECEIPT IN COPYRIGHT OFFICE

APPLICATION AND AFFIDAVIT

JUN 12 1947

TWO COPIES OF BOOK

1c JUN 15 1947

1c JUN 25 1947

Registration of a Claim to Copyright in a published book manufactured in the United States of America

FORM A

REGISTRATION NO.

A 21074

DO NOT WRITE HERE

CLASS

A

This Is To Certify that the statements set forth on this certificate have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.

Barbara Ruzicka

Register of Copyrights
United States of America



1. Copyright Claimant(s) and Address(es):

Name Trustees of Dartmouth College

Address Hanover, New Hampshire

Name

Address

2. Title: Studies in Type Design
(Title of book)

3. Authors:

Name Rudolph Ruzicka Citizenship U.S.A.
(Legal name followed by pseudonym if latter appears on copies) (Name of country)

Domiciled in U.S.A. Yes ☒ No Address

Name Citizenship
(Legal name followed by pseudonym if latter appears on copies) (Name of country)

Domiciled in U.S.A. Yes No Address

Name Citizenship
(Legal name followed by pseudonym if latter appears on copies) (Name of country)

Domiciled in U.S.A. Yes No Address

4. Date of Publication of This Edition:

July 1, 1968
(Month) (Day) (Year)

5. New Matter in This Version:

Introduction, letter and numeral forms designed by the author, and
a translation from Valery, and compilation.

6. Book in English Previously Manufactured and Published Abroad: If all or a substantial part of the text of this edition was previously manufactured and published abroad in the English language, complete the following spaces:

Date of first publication of foreign edition Was registration for the foreign edition made in the U.S.
(Year) Copyright Office? Yes No

If your answer is "Yes," give registration number

Complete all applicable spaces on next page

EXAMINER	

EXHIBIT C TO PLAINTIFF'S BRIEF IN ELTRA v. RINGER

Bill	Patent Office Bill	Copyright Office Bill	Expressly Protected	Hearings	Floor to Reported	Debated	Voted On	Referred to Other House and Committee	Hearings in Other House	Reported to Floor of Other House	Debated By Other House	On By Other House Voted	Presid Signed
H.R. 11321 63d Cong., 2d Sess. (1914)													
S. 3950 63d Cong., 2d Sess. (1914)													
H.R. 18223 63d Cong. 2d Sess. (1914)													
H.R. 6458 64th Cong., 1st Sess. (1915)													
H.R. 14666 64th Cong., 1st Sess. (1916)													
H.R. 17290 64th Cong., 1st Sess. (1916)					H. Rep. 1125								

EXHIBIT C TO PLAINTIFF'S BRIEF IN ELTRA v. RINGER

[illegible]

EXHIBIT C TO PLAINTIFF'S BRIEF IN ELTRA V. RINGER

Bill	Patent Office Bill	Copyright Office Bill	Typeface Protected	Hearings	Floor to Reported	Debated	Voted On	Referred to Other House and Committee	Hearings in Other House	Reported to Floor of Other House	Debated By Other House	On By Other House	Pres. Signed
H.R. 7495 71st Cong., 2d Sess. (1929)													
H.R. 11852 71st Cong., 2d Sess. (1930)				Referred to in general hearings in 1932	With Amendments H. Rep. 1372 Supp. Report H. Rep. 1372, pt. 2		Passed House	Senate Patents		With Amendments S. Rep. 1627 Minority Views S. Rep. 1627, pt. 2			
H.R. 138 72d Cong., 1st Sess. (1931)				Referred to in general hearings in 1932									
S. 2678 72d Cong., 1st Sess. (1932)													
H.R. 12528 72d Cong., 1st Sess. (1932)													

EXHIBIT C TO PLAINTIFF'S BRIEF IN ELTRA v. RINGER

[illegible]

EXHIBIT C TO PLAINTIFF'S BRIEF IN ELTRA v. RINGER

[illegible]

[illegible]

[illegible]

EXHIBIT C TO PLAINTIFF'S BRIEF IN ELTRA v. RINGER

[illegible]

EXHIBIT C TO PLAINTIFF'S BRIEF IN ELTRA v. RINGER

[illegible]

[illegible]

§ 5. CLASSIFICATION OF WORKS FOR REGISTRATION.—The application for registration shall specify to which of the following classes the work in which copyright is claimed belongs:

- (a) Books, including composite and cyclopedic works, directories, gazetteers, and other compilations.
- (b) Periodicals, including newspapers.
- (c) Lectures, sermons, addresses (prepared for oral delivery).
- (d) Dramatic or dramatico-musical compositions.
- (e) Musical compositions.
- (f) Maps.
- (g) Works of art ; models or designs for works of art.
- (h) Reproductions of a work of art.
- (i) Drawings or plastic works of a scientific or technical character.
- (j) Photographs.
- (k) Prints and pictorial illustrations including prints or labels used for articles of merchandise.
- (l) Motion-picture photoplays.
- (m) Motion pictures other than photoplays.
- (n) ¹ Sound recordings.

The above specifications shall not be held to limit the subject matter of copyright as defined in section 4 of this title, nor shall any error in classification invalidate or impair the copyright protection secured under this title.

17 U.S.C. §5

Exhibit D to Plaintiff's Brief

and of all other authors, editors, sufficient importance to record. If each author named should be the office is not used, the size of the plate by 3 inches deep or 12.5 centimeters. The Register of Copyrights requires compliance with the above

and import statements for books published in the English language which are exempt from section 16 of title 17, U.S.C. An importation of 1,500 copies will require application for an interim copyright statement shall present it to the Copyright Office. Upon receipt of a statement of importation of less than 1,500 copies or the balance.

Regulations covering the use of Copyright Form C-100) are found in

CLAIMS TO COPYRIGHT

reserved for oral delivery (Class C), compositions (Class D).

(Class H), scientific or technical character (Class I).

and serial prints or labels (Class K).

identifying reproductions in lieu of

207, 61 Stat. 668; 17 U.S.C. 207.

§ 202.1 Material not subject to copyright.

The following are examples of works not subject to copyright and applications for registration of such works cannot be entertained:

(a) Words and short phrases such as names, titles, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering or coloring; mere listing of ingredients or contents;

(b) Ideas, plans, methods, systems, or devices, as distinguished from the particular manner in which they are expressed or described in a writing;

(c) Blank forms, such as time cards, graph paper, account books, diaries, bank checks, scorecards, address books, report forms, order forms and the like, which are designed for recording information and do not in themselves convey information.

(d) Works consisting entirely of information that is common property containing no original authorship, such as, for example: Standard calendars, height and weight charts, tape measures and rulers, schedules of sporting events, and lists or tables taken from public documents or other common sources.

§ 202.2 Copyright notice.

(a) *General.* (1) With respect to a published work, copyright is secured, or the right to secure it is lost, at the date of publication, i.e., the date on which copies are first placed on sale, sold, or publicly distributed, depending upon the adequacy of the notice of copyright on the work at that time.

(2) If publication occurs by distribution of copies or in some other manner, without the statutory notice or with an inadequate notice, the right to secure copyright is lost. In such cases, copyright cannot be secured by adding the notice to copies distributed at a later date.

(3) Works first published abroad, other than works eligible for an interim registration, must bear an adequate copyright notice at the time of their first publication in order to secure copyright under the law of the United States.

(b) *Defects in notice.* Where the copyright notice does not meet the requirements of the law, the Copyright Office will reject an application for copyright registration. Common defects in the notice include, among others, the following:

(1) The notice lacks one or more of the necessary elements (i.e., the word "Copyright," the abbreviation "Copr.," or the symbol ©, or, in the case of a sound recording, the symbol ℗; the name of the copyright proprietor, or, in the case of a sound recording, the name, a recognizable abbreviation of the name, or a generally known alterna-